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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,221	03/05/2001	Carlos Van Alboom	M0459/7019 (DW)	9698

23628 7590 07/08/2002

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/08/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-8

Office Action Summary

Applicati n N .

09/800,221

Applicant(s)

ALBOOM ET AL.

Examin r

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2002 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-21 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 6 . 6) ☐ Other: _____

Art Unit: 1771

DETAILED ACTION

Response to Amendment

1. Amendment A, submitted as Paper No. 6 on April 16, 2002, has been entered. Claim 21 has been amended as requested. The pending claims are 1-21.
2. Amendment A is sufficient to withdraw the 112, 1st and 2nd rejections set forth in sections 3-6 of the last Office Action. Additionally, Applicant's arguments are sufficient to withdraw the double patenting rejection set forth in section 1 of the last Office Action.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 3 and 4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,247,215 issued to van Alboom et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is well-known in the art to flock fabrics with flock fibers

Art Unit: 1771

which are of “substantially uniform length.” Thus, claims 1 and 2 of the cited patent obviously encompass the present claims 3 and 4.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 has been amended with a limitation that the greige goods is processed “under conditions selected to minimize creasing of the fabric.” The scope of these ‘conditions’ is unclear. The specification teaches washing the fabric at a temperature of at least 40C “in order to minimize the creasing” and the use of desizing agent “which further assists in minimizing the likelihood of creases forming” (specification, page 6, lines 13-14 and 18-20). Does claim 21 intend to limit the temperature of the wash alone or in combination with the use of a sizing agent? Or, are other conditions necessary for minimizing creasing? Thus, the scope of claim 21 is indefinite. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1771

8. Claims 1, 2, 5-12, and 14-20 rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,922,404 issued to Priester in view of EP 581 514 issued to McMulloch.

Said claims were previously rejected as being obvious over the cited Priester patent in view of US 4,895,748 issued to Squires. (See sections 9-11 of the last Office Action.) Due to Applicant's persuasive arguments (Amendment A, page 5, line 11- page 6, line 21) that the combination of Priester and Squires would be contrary to the intended purpose of Priester's invention, said rejection has been withdrawn. However, a new rejection is being set forth based upon the Priester patent in view of said McMulloch reference.

As discussed in the prior Office Action, Priester teaches the limitations of the present claims with the exception that the flocked fabric is printed. However, printed flocked fabrics are well-known in the art. For example, McMulloch teaches printing of a flocked fabric, which may be texturized prior to printing, wherein said texturizing orients the flocked fibers so that "some fibers diverge from neighboring fibers more than other fibers" (col. 3, lines 29-36). Thus, the McMulloch patent establishes that is within the purview of the skilled artisan to print flocked fabrics with multicolored patterns, including flocked fabric where the flock does not extend normal to the plane of the flocked substrate. Hence, it would have been obvious to one skilled in the art at the time of the invention to print the flocked fabric of the Priester patent. Motivation to do so would be to increase the aesthetic value of said fabric. Therefore, claims 1, 2, 5-12, and 14-20 are hereby rejected as being obvious over the cited prior art.

Art Unit: 1771

Allowable Subject Matter

9. Claims 3, 4, and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
July 1, 2002